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No. 480

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

IRMGARD SANTOS

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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OCTOBER TERM, 1960

No.

IRMGARD SANTOS

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Claims entered in the above-entitled case May 4, 1960.

CITATIONS TO OPINIONS BELOW

The findings of fact and opinion of the Court of Claims are reported at 277 F. (2d) 806, 5 AFTR (2d) 1383, and appears in the Appendix hereto, p.

JURISDICTION

The judgment of the Court of Claims was entered May 4, 1960. Petition for Rehearing was denied by the Court of Claims on July 15, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1255.

STATEMENT

The facts are fully and fairly stated in the findings of fact of the Court of Claims which appear in the appendix hereto at page 5a. Summarized, the pertinent facts are:

During the period April 15, 1948 to September 18, 1950, petitioner's husband, Lawrence Santos, purchased and gave to the petitioner several cashier's checks in the total amount of $82,272.67, payable to "Lawrence Santos and or Irmgard Santos." On November 22, 1950, Lawrence Santos received the checks from petitioner and with the proceeds purchased for $81,674.32 Treasury bearer bonds in the face amount of $80,000.00.

At the end of each year from December 31, 1947 to December 31, 1952, Lawrence Santos had assets of from $205,813.93 to $237,302.02. (27 T.C. 571, 576.) The first deficiency assessment against Lawrence Santos for 1943 to 1946, inclusive, was made on December 26, 1951.

One $10,000 bond was sold on April 1, 1952 and the proceeds were used to pay the territorial taxes of petitioner and her husband.

On March 27, 1952, bonds in the principal amount of $70,000 were sold and the proceeds $68,287.90 paid on April 3, 1952 to the Collector of Internal Revenue in payment of individual taxes asserted against petitioner for 1943 to 1947. On April 4, 1952, a certificate of discharge of tax liens against petitioner for the years 1943 to 1947, inclusive, was issued by the Collector of Internal Revenue and duly recorded (App. 7a).

The Commissioner of Internal Revenue, on October 15, 1952, made a jeopardy assessment against petitioner

on the ground that she was a transferee of the assets of her husband, Lawrence Santos, on account of income taxes owed by Lawrence Santos for 1943 to 1946, inclusive. The said jeopardy assessment was in the principal amount of $68,287.90, plus interest of $26,605.15.

In a proceeding in the Tax Court involving petitioner's individual tax liability, *Irmgard Santos* v. *Commissioner*, Docket No. 42682, the Tax Court entered an order on August 10, 1954, pursuant to a stipulation of the parties, that there were overpayments of Irmgard Santos' individual income taxes for 1945 and 1946 in the principal amounts of $24,768.51 and $38,237.18, respectively.

On December 30, 1954, while the transferee case was pending in the Tax Court, the District Director of Internal Revenue at Honolulu credited the overpayments referred to in the preceding paragraph against the jeopardy assessment of the alleged transferee liability.

In 1956 the Tax Court affirmed the action of the Commissioner in asserting the transferee liability. 26 T.C. 571. The Ninth Circuit on June 28, 1957 reversed the Tax Court, 246 F. (2d) 204, with respect to the transferee liability.

On August 7, 1957, after the Ninth Circuit reversed the Tax Court in the transferee case, the District Director reversed on his books the credits he had previously made on account of the petitioner's alleged transferee liability. The said credits, totaling $77,118.47 were then applied by the District Director as a credit against the income tax liability of petitioner's husband, Lawrence Santos, for 1945. This was done although the Commissioner of Internal Revenue, in Docket No.

42682, which involved the year 1945, did not claim petitioner was liable for her husband's 1945 tax liability. As previously stated, the Commissioner lost the transferee case for 1945, in which he contended the petitioner was liable as transferee of her husband, on account of her husband's taxes for 1943 to 1946, inclusive. The decisions in both cases had become "final." The credit to the husband's account was made with no notice of any kind to the petitioner, and she was never given the opportunity of contesting the correctness of the credit.

The Tax Court on August 28, 1957 entered an order in the transferee case that, due to the reversal of the credits as mentioned above, there was no overpayment of transferee liability as of that date in the transferee case. The petitioner appealed that decision to the Ninth Circuit which, on August 8, 1958, held that it had no power to order the refund. 260 F. (2d) 583. The decision of the Tax Court in the transferee case as reversed by the Ninth Circuit and the decision in petitioner's individual case, Docket No. 42682, became "final" as provided in § 7481 of the Internal Revenue Code of 1954.

Petitioner then sued in the Court of Claims for the recovery of the overpayments determined in Docket No. 42682. The Court of Claims considered the merits of the cases already decided in the "final" Tax Court decisions and dismissed the petition without any discussion of the provisions of the Internal Revenue Code that:

(a) decisions of the Tax Court which have become final determine a taxpayer's liability for payment,

(b) any claim of the Commissioner or the taxpayer respecting liability for a particular year must be raised in the Tax Court proceeding, and

(c) that a liability cannot be collected unless the Commissioner of Internal Revenue issues a notice of deficiency and gives the taxpayer the opportunity of appealing to the Tax Court.

The Court of Claims did not cite any Court cases or any provision of the Internal Revenue Code in support of its position. It held that under the Hawaiian community property law petitioner's overpayment of $77,118.47 could properly be applied as a credit on the husband's liability for 1945, although petitioner's share of the community income for 1945 was only $15,621.92 (App. 4a).

QUESTIONS PRESENTED

1. The Commissioner of Internal Revenue proceeded against the taxpayer individually for additional taxes for 1943 to 1947 and against her as transferee of her husband on account of the husband's taxes for 1943 to 1946. Was the Commissioner of Internal Revenue required to make his entire claim for taxes or liability against the petitioner in the Tax Court? Or, after the Tax Court decisions became "final", did the Court of Claims err in holding that the Commissioner of Internal Revenue may apply an overpayment determined by the Tax Court against the tax liability of petitioner's husband where no claim was made in the Tax Court with respect to this liability?

2. The Tax Court in a decision which has become "final" determined that the petitioner had overpaid her tax. Did the Court of Claims err in refusing to

grant judgment for the amount of the overpayment because the Commissioner of Internal Revenue credited the said overpayments to the taxpayer's husband's liability without notice to the taxpayer?

3. Did the Court of Claims err in refusing to give judgment for a refund of taxes collected in a situation where the Commissioner of Internal Revenue has not issued a notice of deficiency as provided by § 6212 of the Internal Revenue Code?

REASONS FOR GRANTING THE WRIT

I.

The decision below that the Commissioner may collect a tax by credit despite "final" Tax Court decisions is in conflict with *Old Colony Trust Co.* v. *Commissioner*, 279 U.S. 716, in which this Court states:

> "By § 1005, the decision of the Board is to become final in respect to all the numerous instances which in the course of the review may naturally end further litigation . . . The complete purpose of Congress to provide a final adjudication in such proceedings, binding all the parties, is manifest, and demonstrates the unsoundness of the objection."[1]

Merten's Law of Federal Income Taxation, § 50.02, quotes *Lehigh Valley Trust Co.* v. *U.S.* (D.C. Pa., 1939), 34 F. Supp. 839, 25 AFTR 876 in holding "that final decisions of the Tax Court are conclusive on all matters between the parties not only upon things actually litigated, but also those which might have been litigated, . . ." This is "consonant with the great remedial

[1] § 272 of the 1939 Code and § 7481 of the 1954 Code are to the same effect.

purposes of the legislation creating the Board of Tax Appeals." *Helvering* v. *Taylor*, 293 U.S. 506, 516.

The Commissioner had the opportunity to contend in petitioner's individual case, Docket No. 42682, that no refund was due the petitioner for 1945 and 1946. Instead, he stipulated that the refund was due. After having so stipulated, he refused to make the refund.

That the action below is erroneous is clearly shown by the legislative history of the Board of Tax Appeals, now the Tax Court.

The Congress, in 1924, created the Board of Tax Appeals so that a taxpayer could have his liability determined prior to the payment of an additional assessment.[2]

The 1926 Act amended the 1924 Act by providing for appeals from the Board of Tax Appeals to Courts of Appeals. The Ways and Means Committee Report on the 1926 Act says in part:

> "Subdivision (f) provides that . . . after the commissioner has notified that taxpayer of the deficiency, he shall have no right to determine an additional deficiency in respect of the same taxable year, . . . Under this section, if the Commissioner has sent a 60-day letter * * * he may not thereafter send another 60-day letter, but must raise before the board * * * his claim for a deficiency greater than that set out in the 60 day letter."[3]

The Finance Committee Report on the 1926 Act shows the clear intention of making Board of Tax Appeals' decisions final. It states:

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[2] H.R. Report No. 179, 68th Congress, 1st Session, p. 7.

[3] H.R. Report, No. 1, 69th Congress, 1st Session, p. 10.

"The bill provides in section 274(a) that except in certain enumerated cases the commissioner can take no action to assess and collect a deficiency until he has mailed to the taxpayer a notice of the deficiency, and if the taxpayer has taken the case to the board, until the decision of the board has become final. Such decision becomes final: (1) on the expiration of the time allowed for appealing to the circuit court of appeals, or (2) where such an appeal has been taken, when the appellate courts have disposed of the case. The bill, therefore, contains in section 274(a) a provision that despite section 3224 of the Revised Statutes (which prohibits injunctions to restrain the assessment or collection of the tax) the taxpayer may in a proper case go into court for an injunction to restrain the commissioner from assessing or collecting a deficiency until the procedure outlined in the bill has been completed.

"It is the purpose of the bill that all questions arising prior to the time the decision of the board has been rendered as to the right of the commissioner to assess and collect the tax, including the question as to whether or not the statute of limitations has run before the mailing of the deficiency letter, shall be determined by the board, and by the courts on appeal from the board."[4]

This Court has had recent occasion to examine the history and purpose of the Tax Court in *Flora* v. *United States*, 362 U.S. 145, 5 AFTR (2d) 1044.

II.

The decision below is in conflict with the decision of the Tenth Circuit in *Owen* v. *United States* (1949) 177 F. (2d) 692, 38 AFTR 832. The Tenth Circuit

[4] Senate Report No. 52, 69th Congress, 1st Session, p. 26.

held that a decision of the Tax Court, affirmed by a Court of Appeals, is binding with respect to the merits in a subsequent suit by the United States to collect the deficiency.

In the case at bar, because the Tax Court decisions were final, the Court of Claims had no power to consider the case on the merits. The Ninth Circuit reversed the Tax Court on the only issue before the Tax Court regarding petitioner's liability to pay her husband's tax liability. The statute is plain that after a Tax Court decision becomes final, the Commissioner is prohibited from issuing further notices of deficiency.[5]

The Tax Court in petitioner's individual case, Docket No. 42682, determined overpayments were due her. There is no authority in tax law to do anything with those payments but to refund them.

III.

The decision below is in conflict with the decision of the Sixth Circuit in *United States* v. *Stock Yards Bank of Louisville* (1956) 231 F. (2d) 628, 49 AFTR 486. In that case, the Government sought to secure savings bonds issued in the name of husband and wife as co-owners. Mr. Justice Stewart speaking for the Sixth

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[5] § 6212(c), 1954 Code: "Further Deficiency Letters Restricted.

"(1) General Rule. If the Secretary or his delegate has mailed to the taxpayer a notice of deficiency as provided in subsection (a), and the taxpayer files a petition with the Tax Court within the time prescribed in section 6213(a), the Secretary or his delegate shall have no right to determine any additional deficiency of income tax for the same taxable year, * * *, except in the case of fraud, and except as provided in section 6214(a) (relating to assertion of greater deficiencies before the Tax Court), or section 6213(b)(1) (relating to mathematical errors), or in section 6861(c) (relating to the making of jeopardy assignments)." § 272(f), 1939 Code is to the same effect.

Circuit held that the Government should bring an action to enforce its lien, and name husband and wife as co-defendants. In that manner, the respective rights of the spouses could be determined.

We are here complaining that the Government failed to follow the statute and has collected the overpayments without giving the taxpayer the opportunity of showing that she was not liable for her husband's taxes.

IV.

The decision below is in conflict with the decision of the Third Circuit in *Raffalle* v. *Granger* (1952), 196 F. (2d) 620, 41 AFTR 1222. In that case, the Collector sought to satisfy the tax liability of the husband by distraining on the bank account in the name of a husband and wife "as tenants by the entireties." The Third Circuit states (p. 623):

> "The United States has no power to take property from one person, the innocent spouse, to satisfy the obligation of another, the delinquent spouse."

The rule just stated was recognized as early as 1921 by the Treasury Department in O. D. 1096, C. B. Dec. 1921, p. 239, as follows:

> "The property of one spouse is not subject to distraint to enforce payment of an income tax obligation of the other spouse unless there has been a transfer of property from one spouse to the other after a tax has been assessed and demand made for payment thereof."

In the case at bar, the cashiers' checks were given to petitioner from April 15, 1948 to September 18, 1950.

The Commissioner did not assert a claim for additional tax against the husband until 1952.

V.

The decision below is in conflict with the decision of the Eighth Circuit in *Knop* v. *United States* (1956), 234 Fed. (2d) 760, 49 AFTR 1497, which holds that a liability for tax allegedly due for a previous year may not be offset against an overpayment for a later year unless the taxpayer is given the opportunity of contesting the alleged deficiency in the Tax Court.

VI.

The decision below is in conflict with the decision of the Ninth Circuit in *Granquist* v. *Hackleman* (1959) 264 F. (2d) 9, 3 AFTR (2d) 729, which held that under the 1954 Code delinquency penalties could not be collected in the absence of a notice of deficiency. The *Hackleman* case quotes from the Committee reports showing the Congressional intent of giving all taxpayers the right to a day in Court before being compelled to pay.

CONCLUSION

The petitioner has been subjected to litigation extending over a period of many years. She has won in both Tax Court cases, and it has been finally determined that she overpaid her tax for 1945 and 1946. In spite of this, the Court of Claims has held, contrary to specific statute and case law, that the amount of the overpayments determined by the Tax Court may be applied, without notice to her, and without giving her the opportunity to contest the matter; as a credit against her husband's tax liability for 1945.

This procedure so completely violates established law and procedure that the writ should be granted.

Respectfully submitted,

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October 11, 1960

APPENDIX

IN THE UNITED STATES COURT OF CLAIMS

No. 433-58

(Decided May 4, 1960)

IRMGARD SANTOS

v.

THE UNITED STATES

OPINION

JONES, *Chief Judge*, delivered the opinion of the court:

Plaintiff seeks to recover overpayments of income taxes for the years 1945 and 1946.

The plaintiff and Lawrence Santos were married in 1928 and were living together as husband and wife in Honolulu in 1945 and 1946. The record shows clearly that they had considerable income during those years from community property. However, according to the findings of the Tax Court they lived lavishly, had an $80,000 home and three late-model cars, and between 1948 and 1950 the husband accumulated $81,000 in cashier's checks.

The husband transferred to the plaintiff in 1950 the proceeds of the cashier's checks sufficient to purchase $80,000 in U.S. Treasury 2½ percent bearer bonds. She sold these bonds; used $10,000 to pay the joint territorial taxes of herself and her husband, and used the balance, some $68,287.90, to pay individual income tax liability that had been asserted against her for the years 1943 to 1947, inclusive. At the time of the transfer of these funds from the husband to the plaintiff the husband was insolvent.[1]

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[1] "During the period December 31, 1947, to December 31, 1952, Lawrence Santos was insolvent." *Irmgard Santos* v. *Commissioner*, 26 T.C. 571, 577.

"There is no question concerning either petitioner's receipt of this money or concerning the insolvency of the husband at the time of its receipt." *Santos* v. *Commissioner*, 246 F. 2d 204, 205.

Later it was determined that there was an overpayment of plaintiff's individual taxes. However, in lieu of refunding the overpayment, the Collector of Internal Revenue applied these overpayment sums to the liquidation of income taxes owed by her husband for the same years, the collector having made a jeopardy assessment against her for that purpose.

There has been considerable litigation in respect to the various phases of the sums involved in this suit. As indicated, the Commissioner of Internal Revenue in 1952 had made a jeopardy assessment against the plaintiff on the asserted ground that as transferee of the assets of her husband, Lawrence Santos, on account of income taxes owed by Lawrence Santos for 1943 to 1946, inclusive, she was, to the extent of the assets transferred to her by her husband, liable for the payment of the unpaid taxes of her husband.

On appeal by plaintiff to the Tax Court, the action of the Commissioner of Internal Revenue was approved. (26 T.C. 571.) The Court of Appeals on June 28, 1957, reversed the Tax Court decision on the ground that the Collector of Internal Revenue had not discharged the burden of proving that the funds used by the plaintiff were not community property. Apparently the plaintiff in that case had contended that the property received was her share of the community income. The Court of Appeals held that the Commissioner of Internal Revenue had not discharged the burden of showing that the large sums that had been transferred to the plaintiff while the husband was insolvent were from the husband's separate property. The issue of whether, if the funds transferred were community funds, such funds would also be liable was not treated as an issue in that decision.

In the meantime in another proceeding in the Tax Court, *Irmgard Santos* v. *Commissioner*, No. 42682, the Tax Court had, on August 10, 1954, entered an order pursuant to a stipulation of the parties that there were overpayments of

plaintiff's individual income taxes for the years 1945 and 1946 in the principal sums of $24,768.51 and $38,237.18, respectively.

The District Director of Internal Revenue reversed on his books the credits he had previously made on account of plaintiff's alleged transferee liability, and applied the credits against the income tax liability of Lawrence Santos for 1945.

The Tax Court by order of December 6, 1957, denied plaintiff's motion of September 6, 1957, which is set out in finding 11, and by order, which is set out in finding 13, refused to set aside the action of the District Director of Internal Revenue who had determined that the overpayments had been absorbed in the credits and that there was no overpayment in the proceeding at that time.

The plaintiff appealed to the United States Court of Appeals for the Ninth Circuit, which court on August 8, 1958, dismissed the petition on the ground that it had no power to order the Commissioner to make the refund. (260 F. 2d 583.)

The situation is somewhat confused, but it seems that the basis of these several decisions, as shown by the ultimate outcome, was the question of whether the securities which were transferred by the husband to plaintiff while he was insolvent were from his separate property rather than from the community property.

The issue before this court is whether the record justifies a holding that the checks transferred by Lawrence Santos to his wife were community property; and if they were community property whether such proceeds were liable under the Hawaiian statutes as they existed at that time for the income taxes of the plaintiff and her husband.

In view of the entire record we can find no reasonable basis for holding that the Collector of Internal Revenue was in error in treating the funds transferred to the plaintiff by

her husband at the time he was insolvent as community property. The original cashier's checks were payable to both the plaintiff and her husband. The husband used these checks to buy bonds. These bonds were delivered to plaintiff who sold them and used the proceeds to pay her taxes. The bonds were easily traceable.

In the original Tax Court suit the plaintiff had contended that they were community funds and thus escaped the charge that they were a gratuity from the husband's separate property.

The Commissioner, in making the application of the funds to the jeopardy assessment, treated them as community funds. In fact, the plaintiff substantially admitted in the brief and oral argument that they were community funds.

The cases cited and relied upon by the plaintiff were not cases arising in States or areas in which community property laws were applicable.

The single issue thus remains before this court as to whether community property under the Hawaiian Code[2] as it existed in 1945 and 1946 was liable for the income taxes for those years.

Under the broad provisions of the Hawaiian community property law in effect in 1945 and 1946, we have no doubt

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[2] Chapter 301A, section 13(c) of the Revised Laws of Hawaii (1945) is as follows:

"The community property shall be liable for debts contracted by the husband or by the wife or by both, and for liabilities of the husband or the wife or both arising out of tort or otherwise, in any transaction entered into or action taken by the husband or the wife or both relating to the management or control or disposition of or other dealing with or for the protection or benefit of the community property. With respect to the liability of community property for such debts and liabilities, no distinction shall be made between community property subject to the management and control of the wife and community property subject to the management and control of the husband."

that the income taxes of the husband were "debts or liabilities" for which the community property was chargeable.

In the light of the record and of the findings of the trial commissioner, which findings we have adopted and approved, we are unable to find that the District Director of Internal Revenue was in error in applying the funds in question as a credit on the tax obligation at issue. We find nothing in the opinions and proceedings before the Tax Court and the Court of Appeals for the Ninth Circuit which is contrary to this view. Those actions and proceedings did not in any way change the character of the funds which were in the hands of the defendant or the defendant's right to use those funds in any legal manner. The amount of tax liability and the holding of the Ninth Circuit that the plaintiff was not liable as a transferee remain undisturbed. Under the statute neither the Tax Court nor a Court of Appeals on appeal from such court has jurisdiction to order a refund, nor do they have authority in a proceeding through the Tax Court to determine whether a credit made by the Director or Commissioner is legal; such a question can only be determined in a suit for refund in a district court or in this court. This situation was recognized by the Ninth Circuit in its decision in the second of these cases when it said: "This Court has no power to order the Commissioner to make a refund to the wife [plaintiff]. If there be any such power, it must lie in another proceeding. * * * But we do not pass upon this point."

The plaintiff's petition is dismissed.

It is so ordered.

LARAMORE, *Judge*; MADDEN, *Judge*; and WHITAKER, *Judge*, concur.

FINDINGS OF FACT

The court, having considered the evidence, the report of Trial Commissioner Wilson Cowen, and the briefs and arguments of counsel, makes findings of fact as follows:

1. Plaintiff is an individual whose address is 3639 Diamond Head Road, Honolulu, Hawaii.

2. Plaintiff and Lawrence Santos, to whom she was married in 1928, were living together as husband and wife in Honolulu in 1945 and 1946. During those years they had income from community property.

3. The Commissioner of Internal Revenue made a jeopardy assessment against Irmgard Santos on October 15, 1952, on the ground that she was a transferee of the assets of her husband, Lawrence Santos, on account of income taxes owed by Lawrence Santos for the years 1943 to 1946, inclusive. The said jeopardy assessment was in the amount of $68,287.90. Interest on account of the said jeopardy assessment in the amount of $26,605.15 was also assessed.

4. The plaintiff appealed to the Tax Court of the United States, which affirmed the action of the Commissioner of Internal Revenue in holding that plaintiff was liable as transferee of the assets of her husband. (26 T.C. 571)

In the findings of fact made by the Tax Court of the United States in Docket No. 46357 (Exhibit "A"), the following facts were recited:

Plaintiff's share of the community income of herself and Lawrence Santos was $15,621.92 in 1945 and $54,409.31 in 1946. Her aggregate community income from June 1, 1945, to June 30, 1949, the period when the Hawaii Community Property Law was in force, amounted to $84,686.60 after Federal income taxes. During the period April 15, 1948, to September 18, 1950, Lawrence Santos purchased and gave to the plaintiff several cashier's checks in the total amount of $82,272.67, payable to "Lawrence Santos and or Irmgard Santos." On November 22, 1950, Lawrence Santos received the checks from plaintiff, he alone endorsed them, and with the proceeds purchased at a total price of $81,674.32 U.S. Treasury 2½ percent bearer bonds in the principal amount of $80,000. He delivered the bonds to

plaintiff, who sold one $10,000 bond on April 1, 1952, and used the proceeds to pay the joint territorial taxes of herself and her husband. On March 27, 1952, she sold such bonds in the principal amount of $70,000 for the sum of $68,287.90, which was paid to the Collector of Internal Revenue "in payment of the individual taxes asserted against petitioner for the taxable years 1943 to 1947, inclusive, in the jeopardy assessments which had been levied against her. On April 4, 1952, a certificate of discharge of tax liens against petitioner for the years 1943 to 1947, inclusive, was issued by the collector of internal revenue and duly recorded."

5. From the decision of the Tax Court, plaintiff appealed to the U.S. Court of Appeals for the Ninth Circuit which, on June 28, 1957, reversed the Tax Court. (246 F. 2d 204.)

6. In another proceeding in the Tax Court, *Irmgard Santos* v. *Commissioner*, Docket No. 42682, the Tax Court entered an order on August 10, 1954, pursuant to a stipulation of the parties, that there were overpayments of plaintiff's individual income taxes for the years 1945 and 1946 in the principal amounts of $24,768.51 and $38,237.18 respectively.

7. On December 20, 1954, the District Director of Internal Revenue at Honolulu credited the overpayments referred to in the preceding finding against the jeopardy assessment made against plaintiff as stated in finding 3. These credits were in the amounts of $27,256.32 for 1945 and $49,835.15 for 1946. A cash payment of $27 made on September 26, 1956, was likewise credited against the jeopardy assessment. The total amount thus credited was $77,118.47.

8. On August 7, 1957, after the decision of the Court of Appeals for the Ninth Circuit reversing the Tax Court in the transferee case, the District Director of Internal Revenue at Honolulu reversed on his books the credits he had previously made on account of plaintiff's alleged transferee liability. The said credits, totaling $77,118.47, were then applied by the District Director as a credit against the income tax liability of Lawrence Santos for 1945.

9. On August 1, 1957, the Tax Court ordered that, pursuant to the mandate of the Court of Appeals, the proceeding be placed on its motions calendar for October 30, 1957, and that the parties file any recomputation, stipulation or motion with respect thereto on or before October 23, 1957.

10. On August 28, 1957, the Tax Court *ex parte*, without giving plaintiff an opportunity to be heard, granted a motion filed by the Commissioner and entered a decision that Irmgard Santos was not liable as a transferee of the assets of Lawrence Santos for 1943 to 1946, inclusive. The order read as follows:

> Pursuant to the mandate of the United States Court of Appeals for the Ninth Circuit filed with this Court August 13, 1957, and the order of this Court dated August 21, 1957, the respondent filed a motion for the entry of a decision that there is no liability on the part of petitioner as transferee of assets of Lawrence Santos for income taxes for the taxable years 1943 to 1946, inclusive, which motion has been granted. It is therefore,
>
> ORDERED AND DECIDED: That petitioner is not liable as transferee of assets of Lawrence Santos for income taxes for the taxable years 1943 to 1946, inclusive.

11. On September 6, 1957, plaintiff moved to vacate the decision of August 28, 1957, on the ground that there was an overpayment of transferee liability in the amount of $77,118.47 as a result of the credits referred to in finding 7. Plaintiff's motion read in pertinent part as follows:

> The said decision of August 28, 1957, should be vacated and a new decision entered showing an overpayment of tax liability because of the following facts:
>
> On or before October 15, 1952, the respondent made a jeopardy assessment of alleged transferee liability in the case at bar in the principal amount of $68,287.90

(See notice of deficiency.) Interest on account of the said jeopardy assessment in the amount of $26,605.15 was likewise assessed.

In Tax Court Docket No. 42,682, *Irmgard Santos* v. *Commissioner*, this Court ordered, as a result of a stipulation of the parties, that there was an overpayment of Irmgard Santos' income tax for the taxable years 1945 and 1946 in the principal amounts of $24,768.51 and $38,237.18, respectively. As a result of these overpayments, the District Director in Honolulu satisfied the alleged transferee liability by crediting the said overpayments of income tax as follows: A credit of $27,236.32 resulting from the income tax overpayment for 1945 and a credit of $49,855.15, plus an additional $27.00 credit, resulting from the income tax overpayment for 1946. This means that the respondent has collected from the petitioner an amount totalling $77,118.47 on account of the alleged transferee liability.

Unless this Court enters a decision showing not only a lack of alleged transferee liability but an overpayment on account thereof in the principal amount of $77,118.47, the decision of August 28, 1957, will remain in effect and the respondent will not have the statutory authority to refund the overpayments of alleged transferee liability. See: Sec. 6512, Internal Revenue Code.

12. On October 21, 1957, the parties filed a stipulation in the Tax Court (Docket No. 46327), reciting the facts which are set forth above in findings 3, 6, 7 and 8.

13. The Tax Court again placed the case on the motions calendar of October 30, 1957, and hearing was held that day. On December 6, 1957, the Tax Court denied Irmgard Santos' motion of September 6, 1957, and reaffirmed its decision of August 28, 1957. The Tax Court's order of December 6, 1957, read as follows:

Pursuant to the mandate of the United States Court of Appeals for the Ninth District reversing a decision entered the 18th day of June 1956, this Court by order dated August 22, 1957, vacated its decision, placed the case on the motions calendar for October 30, 1957, and ordered the parties to file computations, or otherwise move in respect to the case on or before October 23, 1957.

On August 28, 1957, the Commissioner filed a motion setting forth that the liability found due from petitioner in this proceeding was assessed under the jeopardy provisions of the Internal Revenue Code of 1939 and that no part of it has been paid; and, requesting the Court to enter a decision that there is no liability on the part of petitioner as transferee of Lawrence Santos for income taxes for the years 1943 to 1946, inclusive.

That motion was granted, and on August 29, 1957, the Court entered its decision providing, in part, as follows:

"ORDERED AND DECIDED: That petitioner is not liable as transferee of assets of Lawrence Santos for income taxes for the taxable years 1943 to 1946, inclusive."

On September 6, 1957, petitioner moved to vacate the decision entered on August 29, 1957, and for the entry of a decision of no transferee liability and an overpayment in the principal amount of $77,118.47. The motion was placed upon the calendar for hearing on October 30, 1957.

On October 21, 1957, the parties filed a stipulation which, in substance, discloses that on October 15, 1952, the Commissioner made a jeopardy assessment against petitioner as transferee of assets of Lawrence Santos; that as a result of a stipulation decision was entered on August 10, 1954, in Tax Court Docket No. 42682, that there were overpayments of petitioner's in-

come taxes for the years 1945 and 1946; that on December 30, 1954, the District Director at Honolulu, Hawaii, applied the overpayments in income taxes against such transferee liability by two credits aggregating $77,091.47; that on September 26, 1956, he made an additional credit of $27; and, that on August 7, 1957, the District Director reversed such credits and applied them against the income tax liability of Lawrence Santos for 1945. The manipulations of the Commissioner of the overpayments determined in a prior case now show that there is no overpayment in this proceeding at this time. Therefore, the premises considered, it is

ORDERED: That petitioner's motion dated September 6, 1957, praying that the decision of this Court entered herein on August 29, 1957, be vacated and for other relief, be and the same in all respects is hereby denied.

14. The plaintiff appealed to the United States Court of Appeals for the Ninth Circuit from the decision of the Tax Court referred to in the preceding finding. The Court of Appeals for the Ninth Circuit on August 8, 1958, dismissed the petition on the ground that it had no power to order the Commissioner to make the refund. (260 F. 2d 583.)

15. The decision of the Tax Court in Docket No. 42682, determining overpayments of plaintiff's income tax for the years 1945 and 1946, as referred to in finding 6 above, and the decision of the Tax Court in the transferee proceeding (26 T.C. 571) as reversed by the U.S. Court of Appeals for the Ninth Circuit (246 F. 2d 204), have both become "final" as provided in Section 7481 of the Internal Revenue Code of 1954.

CONCLUSION OF LAW

Upon the foregoing findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that the plaintiff is not entitled to recover and the petition is dismissed.

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No. 499

In the Supreme Court of the United States

October Term, 1960

IRMGARD SANTOS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

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In the Supreme Court of the United States

October Term, 1960

No. 480

IRMGARD SANTOS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (Pet. 1a-5a) is reported at 277 F. 2d 806.

JURISDICTION

The judgment of the Court of Claims was entered on May 4, 1960. (Pet. 1a.) A petition for rehearing was denied on July 15, 1960. The petition for a writ of certiorari was filed on October 11, 1960. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1255.

QUESTION PRESENTED

Whether a final determination that a wife has overpaid her own income taxes and is not personally liable for her husband's entitles the wife to recover the amounts paid notwithstanding that the payment was made with community property funds which, under local law, were subject to the husband's separate income tax liability.

STATUTES INVOLVED

Revised Laws of Hawaii (1945):

> Chapter 301A [as added by Act 273, Session Laws of Hawaii (1945)].
> COMMUNITY PROPERTY.
>
> * * * * *
>
> SEC. 7. *Transfers - husband to wife and wife to husband.* The husband may give, grant, bargain, sell or convey directly to his wife, and the wife may give, grant, bargain, sell or convey directly to her husband, his or her community right, title, interest or estate in all or any community property, real or personal. Every such transfer made from the husband to the wife or from the wife to the husband shall operate to divest the property therein described of every claim or demand as community property, and shall vest the same in the transferee as the separate property of the transferee; provided, however, that no such transfer shall affect any equity in favor of creditors at the time of such transfer.
>
> * * * * *

SEC. 13. *Property subject to obligations.*

* * * *

(c) The community property shall be liable for debts contracted by the husband or by the wife or by both, and for liabilities of the husband or the wife or both arising out of tort or otherwise, in any transaction entered into or action taken by the husband or the wife or both relating to the management or control or disposition of or other dealing with or for the protection or benefit of the community property. With respect to the liability of community property for such debts and liabilities, no distinction shall be made between community property subject to the management and control of the wife and community property subject to the management and control of the husband.

* * * *

STATEMENT

This is a suit for refund of alleged overpayment of federal income taxes. The facts of the case are not in dispute.

The taxpayer, a resident of Hawaii, was married to Lawrence Santos in 1928. They were living together as husband and wife in Hawaii in 1945 and 1946, at which time they had income from community property. During the period when the Hawaii Community Property Law was in force (June 1, 1945, to June 30, 1949), the taxpayer's aggregate share of the community income of herself and her husband was $84,686.60 after federal income taxes. (Pet. 6a.)

For the years 1943 to 1946, individual income taxes were assessed against Lawrence Santos. Jeopardy assessments for individual income taxes were also levied against the taxpayer for the years 1943 to 1947. (Pet. 6a, 7a.)

From 1948 to 1950 the taxpayer's husband accumulated and gave to her some $82,000 in cashier's checks, all in both his and the taxpayer's name. In 1950, her husband endorsed the cashier's checks and with the proceeds purchased U. S. Treasury bearer bonds in the principal amount of $80,000, which he delivered to the taxpayer. At the time of the transfer of these funds from the husband to the taxpayer, the husband was insolvent. (Pet. 1a, 6a.)

In 1952, the taxpayer sold the bonds, used $10,000 of the proceeds to pay the joint territorial taxes of herself and her husband, and used $68,287.90 of the proceeds to pay her individual federal income taxes for the years 1943 to 1947, for which jeopardy assessments had been levied against her. (Pet. 6a-7a.)

On October 15, 1952, jeopardy assessments were made against the taxpayer as a transferee in the amount of $68,287.90, plus interest in the amount of $26,605.15, on account of income taxes owed by her husband for the years 1943 to 1946. The asserted grounds for the transferee assessments were that she had received assets from her husband in this amount without consideration while he was insolvent and while he owed taxes to the Government. (Pet. 2a, 6a.)

The taxpayer appealed to the Tax Court from the jeopardy assessments made against her for her in-

dividual taxes and, on August 10, 1954, the Tax Court (*Irmgard Santos* v. *Commissioner*, Docket No. 42682) entered an order, pursuant to a stipulation of the parties, that there were overpayments of the taxpayer's individual income taxes for the years 1945 and 1946 in the principal amount totalling some $63,000. The District Director of Internal Revenue, on December 30, 1954, credited these overpayments of the taxpayer's individual taxes against her outstanding liability as a transferee of her husband. The total amount credited was $77,118.47. (Pet. 7a.)

The taxpayer had also appealed to the Tax Court from the determination of her liability as a transferee. The Tax Court upheld the transferee assessments (26 T. C. 571), but, on appeal, on June 28, 1957, the Court of Appeals for the Ninth Circuit reversed the Tax Court. *Santos* v. *Commissioner*, 246 F. 2d 204. The basis of the Court of Appeals' decision was that the funds received by the taxpayer through the transfer of the cashier's checks above referred to were presumed to be her separate share of the community property rather than the husband's individual property, and that the Government had not sustained its burden of proof to overcome this presumption and accordingly failed to show transferee liability on her part. (Pet. 6a, 7a.)

Following that decision of the court of appeals, the District Director, on August 7, 1957, reversed the credits of $77,118.47 previously made against the taxpayer's transferee liability, and applied these credits against the individual income tax liability of her hus-

band, Lawrence Santos, for the year 1945. On remand, pursuant to the mandate of the court of appeals, the Tax Court issued an order that the taxpayer was not liable as transferee of the assets of Lawrence Santos. The taxpayer then moved the Tax Court to order as well that there was an overpayment on account of the asserted transferee liability in the amount of $77,118.47. The Tax Court denied the motion, holding that there was no overpayment at that time because of the reversal of the credits of $77,118.47 by the District Director and the application of such credits to the husband's unpaid liability for 1945. The United States Court of Appeals for the Ninth Circuit dismissed the taxpayer's petition for review of that ruling on the ground that it had no power to order the Commissioner of Internal Revenue to make the refund. *Santos* v. *Commissioner*, 260 F. 2d 583. (Pet. 7a-11a.)

The taxpayer then instituted this action in the Court of Claims to recover the $77,118.47 as an overpayment of income taxes. The Court of Claims held that the district director's application of the funds to the husband's individual income taxes had been proper because the taxpayer had admitted that the funds were community property and, under Hawaiian law, the community property was liable for the husband's individual income taxes. (Pet. 1a, 4a-5a.)

ARGUMENT

Petitioner does not deny that the funds paid the district director were community property or that, as

such, they were, under Hawaiian law, subject to liability for income taxes assessed on her husband's share of community income. She contends only that the District Director's action in withholding those community funds and applying them to the husband's income tax liability was barred by the previous Tax Court proceedings.

That contention is without substance. The Tax Court proceedings were concerned only with petitioner's personal liability, and the decisions, admittedly "final", established only that the amounts paid by petitioner exceeded her own tax liability and that she was not *personally* liable for her husband's assessed taxes.[1] Those decisions left in the District Director's hands a fund paid by petitioner but in excess of her personal liability. If the fund constituted petition-

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[1] Petitioner's confusion apparently arises from the fact that the personal liability for her husband's taxes asserted against petitioner as a "transferee" was based upon the transfer to her, when her husband was insolvent, of the very fund in issue here. That, however, is only coincidence (the Tax Court proceedings would have been the same if the transfer asserted as the basis for personal transferee liability had involved other property), and the fact remains that the Tax Court proceeding could and did determine only petitioner's personal liability. The court of appeals in that proceeding held that, because petitioner may have been entitled to the Treasury bonds as her share of community property, the Government had not proved a gratuitous transfer to her by the husband, while he was insolvent, of the kind required to impose personal liability on her for his debts. That holding disposed of all the issues in that case, and it was immaterial that the very basis for denying *personal* liability (that the fund was community property) showed, at the same time, that the *fund*, if traced, would be liable *in rem* for the husband's taxes.

er's separate property and was subject only to her personal liabilities, admittedly she was entitled to its return. The district director, however, determined that the fund was community property subject under local law to liability *in rem* for her husband's taxes. He accordingly refused to return the fund and applied it against the husband's liability.

That action presented, not a dispute over petitioner's personal liabilities (the subject matter of the Tax Court proceedings), but simply a controversy between petitioner and a creditor of her husband's over their respective rights to a particular fund. Had petitioner been in possession, the proper action would have been, as petitioner suggests (Pet. 9-10), for the United States to bring an action against her and her husband to test out the respective rights to the property. But the United States was in possession and, as a creditor asserting a right to keep the fund in payment of an indebtedness, was fully entitled to require petitioner to bring suit and then to assert its claims to the fund by way of defense. See *United States* v. *Munsey Trust Co.*, 332 U.S. 234, 239-240; *Stone* v. *White*, 301 U.S. 532. Petitioner duly brought such a suit in the Court of Claims and there obtained a full adjudication of the property issues, the court holding that the rights of the United States to the fund, as a creditor of her husband's, were superior to hers. That decision, based on local community property law, plainly presents no question appropriate for review here.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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NOVEMBER, 1960.

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Office-Supreme Court, U.S.
FILED
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No. 480

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

IRMGARD SANTOS, *Petitioner*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Claims

REPLY TO BRIEF FOR THE UNITED STATES IN OPPOSITION

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November 17, 1960.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 486

EDMUNDO SANTOS, *Petitioner*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Claims

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REPLY TO BRIEF FOR THE UNITED STATES IN OPPOSITION

The Government's brief in opposition does not discuss the issues raised by the petition which are:

1. May a deficiency in tax or liability be collected when "final" Tax Court decisions hold that there was an overpayment and not a deficiency?

(2) May the Government collect a deficiency without issuing a notice of deficiency and thus deprive the tax-

payer of the opportunity to contest the correctness of the determination?

The Government's brief in opposition does not and cannot cite any provision of the Internal Revenue Code which authorizes the procedure used in this case. Everyone knows that taxation is statutory. In the absence of statutory authority, a tax or liability cannot legally be collected.

In this case, despite the statutory mandate that Tax Court decisions are final, the Court of Claims disregarded the final decision of the Tax Court, considered on the merits the community property issue already decided by the Ninth Circuit and thus allowed the Government two bites at the merits of the identical case. This despite "the complete purpose of Congress to provide a final adjudication" in Tax Court proceedings, binding all the parties. *Old Colony Trust Co. v. Commissioner*; 279 U.S. 716.

The Government's brief admits (p. 5)

> "The basis of the Court of Appeals' decision was that the funds received by the taxpayer through the transfer of the cashier's checks above referred to were presumed to be her separate share of the community property rather than the husband's individual property, and that the Government had not sustained its burden of proof to overcome this presumption and accordingly failed to show transferee liability on her part."

In other words, the nature of the fund here involved has been "finally" determined as being beyond the reach of the Collector to apply to the husband's liability. Despite this finality, the Court of Claims, without citing any provision of the Internal Revenue Code,

considered the case on the merits and reached a conclusion contrary to the conclusion of the Ninth Circuit's "final" decision.

The Government's brief also says (p. 7):

> "Those decisions left in the District Director's hands a fund paid by petition but in excess of her personal liability. If the fund constituted petitioner's separate property and was subject only to her personal liabilities, admittedly she was entitled to its return. The district director, however, determined that the fund was community property subject under local law to liability *in rem* for her husband's taxes. He accordingly refused to return the fund and applied it against the husband's liability." The statement just quoted shows:

1. The Director determined that the fund was community property. This was done:

> (a) Without issuing a notice of deficiency which was required by § 6213(a) of the 1954 Code;[1]

---

[1] § 6213(a) reads: "Time for Filing Petition and Restriction on Assessment. Within 90 days, or 150 days if the notice is addressed to a person outside the States of the Union and the District of Columbia, after the notice of deficiency authorized in section 6212 is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. Except as otherwise provided in section 6861 no assessment of a deficiency in respect of any tax imposed by subtitle A or B and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 90-day or 150-day period, as the case may be, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 7421(a), the making of such assessment or the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court."

(b) In complete disregard of the "final" decision which held that petitioner was not liable to pay to the Government the monies here involved.

The two cases cited by the Government in its brief have absolutely nothing to do with the finality of Tax Court decisions and the requirement that a tax or liability cannot be collected without giving the taxpayer the right to a day in Court.

CONCLUSION

The question here involved is important and should be settled. Otherwise, the specific provisions of the Internal Revenue Code as to procedure in deficiency cases, and the finality of Tax Court decisions will be shadowed in doubt and much litigation will result.

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